

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTOPHER KELLEY and U.S. POSTAL SERVICE,
DOGWOOD STATION, Wilmington, NC

*Docket No. 02-580; Submitted on the Record;
Issued October 25, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for reconsideration.

On July 31, 2001 appellant, then a 52-year-old letter carrier, filed a notice of occupational disease alleging that he developed carpal tunnel syndrome due to the repetitive use of his hands when delivering and sorting mail. Dr. Kenneth S. White, a Board-certified plastic surgeon, diagnosed appellant with left carpal tunnel syndrome on August 21, 2001. An x-ray performed on July 5, 2001 indicated that appellant's right wrist was normal.

By letter dated October 8, 2001, Dr. White stated that he operated on appellant on March 11, 1997 for right carpal tunnel syndrome and stenosing tenosynovitis of the right ring finger. He stated that to the best of his recollection, appellant had pain in the right upper extremity in addition to a positive Phalen's and Tinel's sign and decreased sensation in the median nerve. He noted: "With the type of manual labor involved in his line of work, it is quite reasonable to assume that this condition was the cause of or aggravated his condition, requiring surgery." Appellant also submitted a nerve conduction or electromyogram (EMG) study dated October 8, 1999.

By decision dated October 23, 2001, the Office denied appellant's claim since the medical evidence was insufficient to establish causal relationship.

Appellant requested reconsideration and resubmitted Dr. White's October 8, 2001 letter. By decision dated November 20, 2001, his request for reconsideration was denied.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.¹ The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.² Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.³ While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,⁴ neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to his federal employment and such a relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.⁵

In this case, appellant submitted medical evidence from Dr. White diagnosing him with right carpal tunnel syndrome in March 1997 and with left carpal tunnel syndrome in August 2001. He also submitted an x-ray performed on July 5, 2001 indicating that his right wrist was normal and a nerve conduction/EMG study dated October 8, 1999. The only medical evidence of record, which addresses causal relationship between appellant's condition and his employment, is the October 8, 1999 letter from Dr. White.

Dr. White stated: "With the type of manual labor involved in [appellant's] line of work, it is quite reasonable to assume that this condition was the cause of or aggravated his condition, requiring surgery." As noted above, the opinion of the physician supporting causal relationship must be one of reasonable medical certainty and must be supported by affirmative medical evidence supported by medical rationale.⁶ Dr. White's opinion, in his October 8, 1999 report, is speculative and is insufficient to establish causal relationship between appellant's diagnosed condition and his employment. He also does not support his statement with medical rationale, describing how the nature of appellant's employment may have caused or aggravated his carpal tunnel syndrome. As appellant has not submitted probative medical evidence to establish causal relationship, he has not met his burden of proof.

The Board also finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

¹ *Williams Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

² *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

³ *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁴ *Kenneth J. Deerman*, 34 ECAB 641 (1983).

⁵ *Margaret A. Donnelly*, 15 ECAB 40 (1963).

⁶ *Id.*

Under section 8128(a) of the Federal Employees' Compensation Act,⁷ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,⁸ which provides that a claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by [the Office]; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁹

In the instant case, appellant requested reconsideration on November 16, 2001 and submitted Dr. White's October 8, 1999 report. The Board notes that Dr. White's report was previously of record and was considered by the Office in their October 23, 2001 decision. Since the evidence was repetitious and duplicative of evidence already contained in the record, it has no probative value and is not a basis for reopening the claim.¹⁰

As appellant's November 16, 2001 request for reconsideration does not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying that request.

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b).

⁹ 20 C.F.R. § 10.608(b).

¹⁰ *Merlind K. Cannon*, 46 ECAB 581 (1995).

The November 20 and October 23, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 25, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member